

FINAL BILL REPORT

2SHB 1762

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Synopsis as Enacted

Brief Description: Protecting warehouse employees.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Doglio, Berry, Ramel, Fosse, Reed, Alvarado, Peterson and Pollet).

House Committee on Labor & Workplace Standards
House Committee on Appropriations
Senate Committee on Labor & Commerce

Background:

The Washington Industrial Safety and Health Act.

Under the Washington Industrial Safety and Health Act (WISHA), an employer must provide a workplace free from recognized hazards. The Department of Labor and Industries (Department) administers WISHA. If the Department believes an employer has committed a violation, the Department issues a citation and notice of assessment, and, depending on the violation, may assess civil penalties. Civil penalties may be adjusted based on the employer's inspection history, the size of the workforce, and other factors.

Rest and Meal Breaks.

Employees must be allowed paid rest periods of at least 10 minutes for every four hours worked, and at least 30 minutes for a meal period for every five hours worked. An employee may waive the right to a meal break, but may not waive the rest period requirements. Employees must also be provided reasonable access to bathroom facilities, and employers may not restrict bathroom breaks to time schedules or impose unreasonable time use restrictions.

Minimum Wage Act.

The Minimum Wage Act (MWA) establishes a statewide minimum hourly wage, requires overtime pay for certain workers, provides for paid sick leave, and provides for other employment standards. Under the MWA, the Director of the Department may inspect

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places of business, investigate, and gather data regarding wages, hours, and other conditions and practices of employment in any industry subject to the MWA.

Summary:

Minimum requirements and standards are created regarding quotas at warehouse distribution centers, including requirements for employers to provide notices of quotas to employees and prohibiting retaliation against employees exercising certain rights regarding quotas.

Warehouse Distribution Center Employers.

The requirements apply to employers that, directly or indirectly, or through an agent or other person, exercise control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center (warehouse) in the state or of 1,000 or more employees at one or more warehouses in the state. For purposes of determining responsible employers, all agents and affiliates will be deemed employers and are jointly and severally responsible for compliance.

"Warehouse distribution center" means an establishment as defined by any of the following North American Industry Classification System codes, however such establishment is denominated:

- 493 for warehousing and storage, but not 493130 for farm product warehousing and storage;
- 423 for merchant wholesalers, durable goods;
- 424 for merchant wholesalers, nondurable goods; or
- 454110 for electronic shopping and mail-order houses.

Descriptions and Notices of Quotas.

An employer must provide every employee: (1) a written description of each quota the employee is subject to; (2) any potential adverse employment action that could result from failing to meet the quota; and (3) any incentives or bonuses associated with meeting the quota. Written descriptions must be provided upon hire or within a certain time for existing employees, and must be in plain language in the employee's preferred language. The Department may adopt rules regarding the format and language access requirements.

Whenever a quota is changed, the employer must notify the employee of the new quota as soon as possible and before the employee is subject to the quota. Notice can be verbal and must be followed by an updated written description within two business days.

Whenever an employer takes adverse action against an employee for failing to meet a quota, the employer must provide the employee with the applicable quota and the employee's personal work speed data.

Standards for Quotas and Prohibited Activities.

The time period in a quota must include:

- time for rest and bathroom breaks, and reasonable time to travel to rest areas and bathroom facilities;
- reasonable travel time to on-site designated meal break locations;
- time to perform any activity required by the employer to do the work subject to the quota; and
- time to take any actions necessary for the employee to exercise the right to a safe and healthful workplace under WISHA, including time to access tools or safety equipment.

Reasonable travel time must include consideration of the architecture and geography of the facility.

An employee is not required to meet a quota that violates the provisions regarding sufficient time. An employer may not take adverse action against an employee for failing to meet a quota that: (1) was not disclosed to the employee as required; or (2) violates the provisions requiring sufficient time.

A quota that does not allow time for bathroom breaks or time to take action necessary for the employee to exercise the right to a safe and healthful workplace or that exposes an employee to occupational safety and health hazards, violates WISHA, and WISHA enforcement procedures apply.

Recordkeeping and Right to Request Records.

An employer must keep records of: (1) written descriptions of quotas; (2) each employee's personal work speed data; and (3) aggregated work speed data for similar employees at the same warehouse. An employer must keep records for at least three years from the date an employee separates from employment or from the date of any adverse action taken against an employee.

An employee may request, at any time, from the employer: (1) a written description of each quota to which the employee was subject to; (2) the employee's own personal work speed data for the prior six months; and (3) aggregated work speed data for the prior six months. A former employee may request similar data within three years after the date of the employee's separation from the employer.

The employer must provide the written descriptions of quotas within two business days, and personal work speed data and aggregated work speed data within seven business days, of receiving the request.

Enforcement and Penalties.

Procedures are established for filing complaints with the Department and appealing citations and notices of assessment. The Department may initiate investigations without an employee's complaint and may request the employer to perform a self-audit of records

related to quotas, which must be provided within a reasonable time. If the Department requests it, the employer must notify employees in writing that the Department is conducting an investigation. If the Department finds a quota violation, the Department may order the employer to review and provide a corrected written quota to employees within 15 calendar days and place a letter in the employee's personnel file to acknowledge the correction.

An employer may be liable for a minimum civil penalty of \$1,000 for each violation. For a first violation, the penalty may not exceed \$1,000. The Department must create, by rule, a schedule of enhanced penalties, not to exceed \$10,000, for repeat violation. The Department may waive or reduce any penalty assessed if the employer took corrective action. The Department may also bring a civil action in court to enforce violations.

An employer who violates a requirement resulting in a rest or meal period violation must pay the employee one additional hour of pay for each day there was a violation.

Rebuttable Presumption of Retaliation.

A person may not discharge, retaliate, discriminate, or take adverse action against an employee or former employee for exercising any rights regarding quotas, including requesting data or filing a complaint.

There is a rebuttable presumption that an adverse action is retaliatory if the action is taken within 90 days of an employee or former employee engaging in a protected activity. The presumption may be rebutted by clear and convincing evidence. Enforcement of anti-retaliation provisions must be pursuant to procedures under the MWA.

Definitions.

Definitions are provided for various terms. "Quota" means a work performance standard where:

- an employee is assigned or required to perform a specified productivity speed, a quantified number of tasks, or a quantified amount of material, within a defined time period and under which the employee may suffer adverse employment action if the employee fails to complete the performance standard; or
- an employee's actions are categorized between time performing tasks and not performing tasks, and the employee may suffer adverse employment action for failing to meet the standard.

"Employee work speed data" means information an employer collects, stores, analyzes, or interprets relating to an individual employee's performance of a quota.

Votes on Final Passage:

House	53	42	
Senate	29	20	(Senate amended)

House			(House refused to concur/asked Senate to recede)
Senate	28	21	(Senate receded/amended)
House	56	42	(House concurred)

Effective: July 1, 2024